IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 87 of 1994

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTIDAN BHAIRAVDAN THAKORE - Petitioner(s)

Versus

THE CHAIRMAN, GUJARAT MEDICAL BOARD & 3 - Respondent(s)

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Appearance :
MR KG VAKHARIA, SR.ADVOCATE with MR TUSHAR MEHTA for the Petitioner
MR UR BHATT, AGP for Respondent No(s).: 1, 2,3.
MR JB PARDIWALA for Respondent No(s).: 4.
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
Date : 16/08/2005

ORAL JUDGMENT

By this writ petition preferred under Article 226 of the Constitution of India the petitioner seeks appointment as District and Sessions Judge pursuant to his selection made in the year 1991.

In the year 1991 the petitioner was selected for the post of District and Sessions Judge. Pursuant to his selection for appointment to the post of District and Sessions Judge he was called upon to present himself before the Medical Board for physical examination. On physical examination carried out on 7th April, 1993 the Medical Board opined that the petitioner was suffering from bilateral bubonocele, a type of hernia. The petitioner was advised to undergo immediate surgery and to present again for physical examination. The petitioner chose not to undergo the surgical treatment as advised. Instead, he entered into a correspondence insisting that he was not suffering from any disease and that the suggested hernia would not be an impediment in discharge of duty as a Judge. As the Medical Board was not inclined to issue a physical fitness certificate unless the petitioner underwent the suggested surgery, the petitioner has preferred the present petition and has prayed that the Medical Board, the respondent no.1 be directed to issue a physical fitness certificate without insisting upon the petitioner's taking the surgical treatment. In the alternative he has prayed that he be appointed as District and Sessions Judge without insisting upon production of certificate of physical

fitness.

In answer to the notice issued by this Court one Dr.Sharad Vyas, President-Standing Medical Board, has made counter-affidavit. It is stated that the bilateral bubonocele is a type of hernia which may lead to further complications requiring immediate surgery. It is also stated that surgery is the only available treatment.

Be that as it may, if the petitioner is suffering from bilateral bubonocele as opined by the Medical Board for which a surgery is required, the Medical Board cannot be directed to issue certificate of physical fitness against its opinion nor the State Government can be directed to appoint the petitioner as District and Sessions Judge without insisting upon the production of certificate of physical fitness contrary to the rules. Neither of the reliefs prayed for by the petitioner can be granted.

The petition is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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